SUPREME COURT, U.S.
FILED
SEP 3 1980
MICHAEL RODAK, JR., CLERK

No. 80-200

In the Supreme Court of the United States

October Term, 1979

CHASE MORSEY, JR.,
Petitioner,

vs.

ELMER G. GREEN and FIRST NATIONAL BANK IN PALM BEACH,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT ELMER G. GREEN IN OPPOSITION

JONES & FOSTER, P.A.
WILLIAM A. FOSTER
(Counsel of Record)
601 Flagler Drive Court
Post Office Drawer E
West Palm Beach, Florida 33402
(305) 659-3000
Attorneys for Respondent Elmer G. Green

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTIONS PRESENTED FOR REVIEW

I

DOES THE COURT OF APPEALS' PER CURIAM AFFIRMANCE AND DENIAL OF REHEARING PRESENT JUSTIFICATION FOR REVIEW BY CERTIORARI WHEN:

A. The Order Of Dismissal By The Trial Judge Was Proper Under Established Law Regarding The Court's Determination Of Its Subject Matter Jurisdiction And Did Not Deny Morsey Any Right To A Jury Determination.

B. Morsey Waived Any Right To A Jury Trial On The Existence Of Securities Issue.

C. Morsey Failed To Object To, Or To Timely Raise On Appeal The Issue Of His Asserted Right To A Jury Trial.

D. In Determining Morsey's Interest Was Not A Security, The Courts Below Properly Applied The Relevant Case Law.

TABLE OF CONTENTS

QUESTIONS PRESENTED I
TABLE OF AUTHORITIES IV
STATEMENT OF THE CASE 1
STATEMENT OF THE FACTS 2
SUMMARY OF ARGUMENT 3
ARGUMENT 4

I

A. The Order Of Dismissal By The Trial Judge Was Proper Under Established Law Regarding The Court's Determination Of Its Subject Matter Jurisdiction And Did Not Deny Morsey Any Right To A Jury Determination 4

B. Morsey Waived Any Right To A Jury Trial On The Existence Of Securities Issue 5

C. Morsey Failed To Object To, Or To Timely Raise On Appeal The Issue Of His Asserted Right To A Jury Trial 7

D. In Determining Morsey's Interest Was Not A Security, The Courts Below Properly Applied The Relevant Case Law 9

CONCLUSION 12

APPENDIX—

Statement of Issues Presented in Morsey's Brief in the United States Court of Appeals for the Fifth Circuit A-1

PREVIOUS PAGE WAS BLANK

Table of Authorities

Ahrens v. American-Canadian Beaver Co., 428 F.2d 926 (10th Cir. 1970) 5

Altschuler v. Cohen, 471 F.Supp. 1372 (S.D. Tex. 1979) 11

Basham v. Finance America Corp., 583 F.2d 918 (1978), *cert. denied, sub nom. DeJaynes v. General Finance Corp. of Ill.*, 439 U.S. 1128 (1979) 8

Bartels v. Algonquin Properties, Ltd., 471 F.Supp. 1132 (D. Vt. 1979) 11

Bullock v. Mumford, 509 F.2d 384 (D.C. Cir. 1974) 9

California v. Taylor, 353 U.S. 553 (1957) 8

Continental Marketing Corp. v. SEC, 387 F.2d 466 (10th Cir. 1967) 10

Data Disc, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280 (9th Cir. 1977) 5

Duignan v. United States, 274 U.S. 195 (1927) 5-6

Gibbs v. Buck, 307 U.S. 66 (1939) 4

Great Western Bank and Trust v. Kotz, 532 F.2d 1252 (9th Cir. 1976) 5

Grainger v. State Security Life Ins. Co., Slip Op. No. 75-301, p. 1620 (5th Cir. Feb. 18, 1977) 10

Jamestown Farmer's Elevator, Inc. v. General Mills, 552 F.2d 1285 (8th Cir. 1977) 9

Joseph v. Blair, 488 F.2d 403 (4th Cir. 1973), *cert. denied*, 416 U.S. 955 (1974) 9

Lawn v. United States, 355 U.S. 339 (1958) 8

Maytag Co. v. Meadows Mfg. Co., 45 F.2d 299 (7th Cir. 1930), *cert. denied*, 283 U.S. 843 (1931) 7

McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936) 5

National Family Ins. Co. v. Exchange National Bank of Chicago, 474 F.2d 237 (7th Cir. 1973), *cert. denied*, 414 U.S. 825 (1973) 6, 8

National Labor Relations Board v. Sears, Roebuck & Co., 421 U.S. 132 (1975) 9
Oxford Finance Companies, Inc. v. Harvey, 385 F. Supp. 431 (E.D. Pa. 1974) 10
Pollard v. United States, 352 U.S. 354 (1957) 8
Real v. Simon, 514 F.2d 738 (5th Cir. 1975) 9
Rosemound Sand & Gravel Co. v. Lambert Sand & Gravel Co., 469 F.2d 416 (5th Cir. 1972) 4
SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344 (1943) 10
SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476 (9th Cir. 1973) 10
SEC v. Koscot Interplanetary, Inc., 497 F.2d 473 (5th Cir. 1974) 10
SEC v. W. J. Howey Co., 328 U.S. 293 (1946) 10, 11
Simpson v. Union Oil Company of California, 411 F.2d 897 (9th Cir. 1969), *rev'd on other grounds*, 396 U.S. 13 (1969) 8
Smith v. Cushman Motor Works, 178 F.2d 953 (8th Cir. 1950) 7
Southland Reship, Inc. v. Flegel, 534 F.2d 639 (5th Cir. 1976) 6
State of Alabama Ex Rel. Baxley v. Woody, 473 F.2d 10 (5th Cir. 1973) 4
Stephens v. Arrow Lumber Company, 354 F.2d 732 (9th Cir. 1966) 8
Tcherepin v. Knight, 389 U.S. 332 (1967) 10
United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975) 10
Van Arsdale v. Claxton, 391 F.Supp. 538 (S.D. Cal. 1975) 10, 11
West v. Devitt, 311 F.2d 787 (8th Cir. 1963) 7

No. 80-200

In the Supreme Court of the United States

October Term, 1979

CHASE MORSEY, JR.,
Petitioner,

vs.

ELMER G. GREEN and FIRST NATIONAL BANK IN PALM BEACH,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT ELMER G. GREEN IN OPPOSITION

STATEMENT OF THE CASE

Course of Proceedings Below

Respondent, ELMER G. GREEN, adopts the statement of course of proceedings below submitted in this case by Respondent, FIRST NATIONAL BANK IN PALM BEACH, with the following additions:

Following the District Court's dismissal for lack of subject matter jurisdiction (PA 26),[1] Morsey moved for a rehearing on the grounds *inter alia* that he had not been given the opportunity to present his case on the jurisdictional issue *to the Court* (emphasis added) (R. 418-419). The District Court granted rehearing and scheduled an evidentiary hearing on the question of whether or not security transaction was involved; the order informed the parties the Court would enter findings of fact and conclusions of law and requested the parties submit proposed findings of fact and conclusions of law to the Court (PA 27). Prior to the hearing, Morsey submitted proposed findings of fact and conclusions of law to the Court (R. 455-461). At the evidentiary hearing Morsey produced evidence, primarily his own testimony (EVH 1-77), and also offered documentary evidence (EVH 8, 28).

STATEMENT OF THE FACTS

Respondent GREEN adopts without addition the statement of the facts submitted by Respondent, FIRST NATIONAL BANK IN PALM BEACH, in this case.

---

1. References herein are to the record (R.) as paginated in the Court of Appeals. Exhibits were not indexed in the appellate record. Transcripts of hearings were separately bound and paginated, *e.g.*, (EVH) = Evidentiary hearing on motion to dismiss; (R. Vol. pp.) = Trial on the Merits. (PA) = Appendix to Petition for Writ of Certiorari; (RA) = Appendix to the brief of this Respondent Green in opposition.

SUMMARY OF ARGUMENT

As to Question I. Presented by Morsey

Defendant's Motion to Dismiss put at issue the trial court's subject matter jurisdiction which is ultimately a question of law for the Court. According to the power and discretion given it by the Federal Rules of Civil Procedure and established case law, the trial court in this case held an evidentiary hearing, made findings of fact and dismissed portions of Morsey's Complaint because the Court lacked subject matter jurisdiction. Morsey, represented by counsel, participated without objection in this proceeding and thereby waived any right to a jury trial, rendering this question moot and not appropriate for review by this Court on certiorari. Morsey failed to preserve the alleged error presented in this question in the trial court and Circuit Court of Appeals, thereby waiving it. Further, Morsey's Petition fails to show the extraordinary circumstances required for this Court to consider this question not properly raised below.

As to Question II. Presented by Morsey

There is no question that real estate investments and land syndications are subject to federal securities' laws if the well-settled definitional tests of the Statutes and established case law are met. Definitions in Statutes and case law cannot cover every possible fractional situation. However, settled federal case law provides ample definitional tests of what constitute "securities" or "investment contracts", "profits", and "efforts of others", to apply to cases such as this one. This law was correctly applied by the trial court and the Court of Appeals properly affirmed the trial court because its findings of fact were not clearly erroneous and supported the dismissal under established case law. In this case, Morsey merely failed to present sufficient facts required under the law to give the Court subject matter jurisdiction.

ARGUMENT

I.

Morsey's Petition fails to address the considerations of this Court's Rule 17 directly, but the Petition apparently asserts that this Court should grant certiorari as to the first question presented:

1. To settle expressly and definitely in the absence of clearly controlling case law, whether the fact questions necessary to determine the existence of a security are for the jury; and

2. To correct what Petitioner asserts to be the denial of his Ninth Amendment right to a jury trial resulting from the District Court Judge dismissing portions of his Complaint on the grounds of lack of subject matter jurisdiction and based upon findings of fact made by the Court.

A. The Order Of Dismissal By The Trial Judge Was Proper Under Established Law Regarding The Court's Determination Of Its Subject Matter Jurisdiction And Did Not Deny Morsey Any Right To A Jury Determination.

It is well-established that when the Court's subject matter jurisdiction is questioned, the Court may hold evidentiary hearings, receive evidence, resolve factual issues and make findings of fact to determine its jurisdiction[2] without that determination constituting deprivation of any right to a jury trial.[3] Further, when the Court in its discretion decides to determine its jurisdiction prior to a trial on the merits, the Plaintiff, like Morsey in this case, can

---

2. *E.g., Gibbs v. Buck*, 307 U.S. 66 (1939); *State of Alabama Ex Rel. Baxley v. Woody*, 473 F.2d 10, 12 (5th Cir. 1973).

3. *Rosemound Sand & Gravel Co. v. Lambert Sand & Gravel Co.*, 469 F.2d 416, 418 (5th Cir. 1972).

be required to establish the jurisdictional facts by a preponderance of the evidence.[4]

Cases specifically considering whether a "security" was involved in civil cases under the federal securities laws also establish that the question is ultimately one of law for the Court. *Great Western Bank and Trust v. Kotz*, 532 F.2d 1252, 1255 (9th Cir. 1976); *Ahrens v. American-Canadian Beaver Co.*, 428 F.2d 926, 928 (10th Cir. 1970). Even though under certain circumstances the Court could allow the jury to determine if a security was transacted, the question of whether the relevant facts present a jury question is itself a question of law for the Court.[5]

As discussed more fully *infra* Morsey participated in the instant evidentiary hearing without objection. His Petition cites no fact found by the trial judge which Morsey asserts is clearly erroneous on the basis of the record. His Petition cites no specific facts in dispute which required submission to the jury to resolve the existence of a security issue, and prevented the judge from determining there was no jury question as a matter of law. Therefore Morsey's Petition fails to show any abuse of power or discretion by the trial court or error by the Court of Appeals.

B. Morsey Waived Any Right To A Jury Trial On The Existence Of Securities Issue.

It has long been the position of this Court that any Seventh Amendment Right to a jury trial in a civil case can be waived by participation without objection in trial of a matter by the Court. *See, e.g., Duignan v. United*

---

4. *McNatt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285, N. 2 (9th Cir. 1977).

5. *Kotz*, 532 F.2d at 1255.

States, 274 U.S. 195, 198 (1927). Established subsequent case law shows that Morsey's participation in the instant evidentiary hearing constituted a waiver of any right he had to a jury trial on the issue of whether a security was transacted.

In *National Family Insurance Company v. Exchange National Bank of Chicago,* 474 F.2d 237, 241 (7th Cir. 1973), *cert. denied,* 414 U.S. 825 (1973) the Court determined under "ample authority" that Plaintiff had waived any right to a jury trial on the issue of the Statute of Limitations raised by a Motion to Dismiss when it participated without objection in a factual hearing held before the Court solely to determine that issue. In applying the law, the facts the Court found determinative are present in this case; the Plaintiff, like Morsey, made no objection to the procedure and participated fully in it by presenting witnesses,[6] documentary evidence,[7] and arguments by counsel on its own behalf.[8] 474 F.2d 241.

In *Southland Reship, Inc. v. Flegel,* 534 F.2d 639, 643-645 (5th Cir. 1976), the Court considered Plaintiff's argument that since he had filed a general demand for a jury trial and had made no formal oral stipulation waiving a jury trial on the liability issue, the trial Judge's adverse determination on that issue following a consolidated hearing on preliminary and permanent injunctions deprived him of his right to a jury trial. The Court affirmed the trial court at 534 F.2d 645, on the grounds Plaintiff had waived any right to a jury trial on that liability issue. The facts the Court found determinative were:

(1) The period of over one month between notice of the hearing and the holding of the hearing, giving coun-

---

6. EVH 1-77.
7. EVH 8, 28.
8. EVH 55-60.

sel ample time to determine the effects of the hearing and to object;

(2) The record of the hearing showed Plaintiff knew the issue of liability was being presented to the Court, but did not assert any claim of right to a jury trial except to the damage issue;

(3) The Court requested the parties to submit proposed findings of fact and conclusions of law which included the liability issue, and Plaintiff did so without objection. 534 F.2d 644. Similar determinative facts are present in this case.[9]

Even assuming, *arguendo*, that Morsey had any right to a jury trial on the issue of whether a security was involved, it is clear on the facts and record of this case that under established and non-conflicting decisions Morsey waived any right to a jury trial as to that issue. Therefore, Question I presented by Morsey is moot and obviously not appropriate for review by this Court on certiorari.

C. Morsey Failed To Object To, Or To Timely Raise On Appeal The Issue Of His Asserted Right To A Jury Trial.

This Court has consistently determined that issues and questions not pressed or passed upon in the lower Court

---

9. Morsey had ample time from the notice of the hearing to determine the effects and object (PA 27 and R. 532, 619, 626); he made no mention of a right to a jury trial at the evidentiary hearing and it is clear that he understood that the subject matter jurisdiction issue was the sole issue under consideration (PA 27), and (EVH 3-4); he submitted proposed findings of fact and conclusions of law prior to the hearing (R. 455-461). *See, also, Smith v. Cushman Motor Works*, 178 F.2d 953 (8th Cir. 1950), where the Court found the Appellant waived any right to a jury trial on the issue as to the existence of the contract sued on when he failed to object to the hearing and determination of that issue by the Court; and *cf., West v. Devitt*, 311 F.2d 787, 788 (8th Cir. 1963), and *Maytag Co. v. Meadows Mfg. Co.*, 45 F.2d 299, 301-302 (7th Cir. 1930), *cert. denied*, 283 U.S. 843 (1931).

will not be considered or resolved by this Court except in exceptional cases.[10] It is also well settled that because the Appellant is asserting the denial of a constitutional right not raised or considered below does not in and of itself justify review by this Court.[11] Morsey's Petition on its face lacks any showing of facts that this case involves any "exceptional circumstances" such as those which have been found to justify an initial review by this Court.[12]

Morsey, though represented by counsel at all stages of the case below never raised objection in the trial court on denial of jury trial grounds to the holding of the evidentiary hearing or the entry of the dismissal upon the findings of fact by the Court. Under well-established authority his failure to object waived his right to claim error in the Court of Appeals.[13]

There is also specific authority that when a party raises the issue of an alleged right to a jury trial for the first time on appeal it is too late for that argument to be considered.[14] Established authority also shows that raising issue for the first time on Petition for Rehearing in the Court of Appeals will prevent the issue from being con-

---

10. *E.g., Duignan, supra,* 274 U.S. 200; *California v. Taylor,* 353 U.S. 553, 557, N. 2 (1957); *Lawn v. United States,* 355 U.S. 339, 362-363, N. 16 (1958).

11. *Duignan, supra,* 274 U.S. at 200.

12. This case is distinguishable from cases in which exceptional circumstances have been found, *e.g., Pollard v. United States,* 352 U.S. 354 (1957), in which the Petitioner was proceeding *pro se* and therefore was permitted to raise constitutional arguments for the first time in this Court.

13. *Basham v. Finance America Corp.,* 583 F.2d 918, 922 (1978), *cert. denied, sub nom. DeJaynes v. General Finance Corp. of Ill.,* 439 U.S. 1128 (1979); *Stephens v. Arrow Lumber Company,* 354 F.2d 732, 734 (9th Cir. 1966).

14. *National Family, supra,* 474 F.2d 241; *Simpson v. Union Oil Company of California,* 411 F.2d 897, 901 (9th Cir. 1969), *rev'd on other grounds,* 396 U.S. 13 (1969).

sidered.[15] Morsey raised the issue of denial of his right to a jury trial for the first time on Petition for Rehearing—no such issue was raised in his brief on appeal (RA 1).

Morsey obviously did not feel the alleged error presented in Question I was significant enough to raise until he was turned back by the Court of Appeals on all his other arguments. Now, without any factual basis in his Petition showing "exceptional circumstances" he seeks to protract this case under the guise that an important legal issue is presented to this Court for resolution. From the above analysis it is clear that the decision of the Court of Appeals was justified by the application of settled law to the case under factual circumstances where neither the District Court nor Court of Appeals thought sufficient legal questions were involved to justify written opinions. Such a case does not seem worthy of this Court's attention on certiorari and it should adhere to its policy that where there is no lower Court opinion on a legal issue the Court declines to consider the legal claim. *National Labor Relations Board v. Sears, Roebuck & Company,* 421 U.S. 132, 163-4 (1975).

D. In Determining Morsey's Interest Was Not A Security, The Courts Below Properly Applied The Relevant Case Law.

Morsey asserts this Question II is appropriate for review by writ of certiorari in order to:

---

15. *Joseph v. Blair,* 488 F.2d 403, 404 (4th Cir. 1973), *cert. denied,* 416 U.S. 955 (1974); *Real v. Simon,* 514 F.2d 738, 739 (5th Cir. 1975); *Bullock v. Mumford,* 509 F.2d 384, 388 (D.C. Cir. 1974), finding assertion of violation of constitutional right of due process not dealt with in opinion of the Court came too late and did not require reconsideration on rehearing; *Jamestown Farmer's Elevator, Inc. v. General Mills,* 552 F.2d 1285, 1295-6 (8th Cir. 1977).

(1) determine and clarify the applicability of the securities laws to land syndications[16] and real estate investments,[17] and;

(2) to clarify the meaning of "profits" and "efforts" tests applied in determining whether a security was transacted.[18]

The necessity of such clarification or resolution is not presented by this case. It is well established that securities' laws apply to real estate investments and syndications when the long-established definitional tests of *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946) are met after a consideration of the economic realities and total circumstances surrounding the transaction. *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975); *Tcherepin v. Knight*, 389 U.S. 332 (1967); *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344 (1943).[19]

It is clear in this case that the Court applied the relevant definitional tests established by this Court.[20] The trial court's findings of fact and conclusions of law show the economic realities and total circumstances were con-

---

16. Morsey's Petition, p. 17.

17. *Id.* at p. 21.

18. *Id.*

19. *See*, numerous cases cited in Morsey's Petition, pp. 20-21, N. 14.

20. *See*, PA pp. A. 30-32. The Court cited *Howey, supra*, 328 U.S. 298-299 (1946); *SEC v. Glenn W. Turner Enterprises*, Inc., 474 F.2d 476, 482 (9th Cir. 1973); *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473 (5th Cir. 1974); *Joiner, supra*, 320 U.S. 344; *Continental Marketing Corp. v. SEC*, 387 F.2d 466 (10th Cir. 1967); *Grainger v. State Security Life Insurance Co.*, Slip Op. No. 75-301, pp. 1620, 1623 (5th Cir. Feb. 18, 1977); *Van Arsdale v. Claxton*, 391 F.Supp. 538 (S.D. Cal. 1975); *Oxford Finance Companies, Inc. v. Harvey*, 385 F.Supp. 431 (E.D. Pa. 1974). Green submits none of these opinions conflict with decisions of this Court and they clearly support the dismissal entered by the Court on the facts found.

sidered and supported the dismissal under the established authority of the Court and the additional authority cited by the Court.[21]

Morsey suggests that case authority cited by the District Court and certain facts on which it relied conflict with other cases applying the "profits" test.[22] He attempts to support this argument by factoring out single aspects of those cases and contrasting their holdings or the result in this case. This argument ignores that under the established tests the comparison needs to be made upon the total circumstances of each transaction.

What Morsey attempts to suggest is conflict and ambiguity in the law represented by these cases is really just the several courts applying the established definitional tests of *Howey* and the gloss of subsequent decisions of this Court to the unique and multifarious circumstances before them. The tests were developed for just that purpose.[23]

Morsey also argues the District Court erred in determining that he did not rely on the efforts of others.[24] In support he would have this Court rely on the allegations and conclusions in his argument (without reference to or support in the record) rather than on the factual conclusions rendered by the Court after sworn testimony. His Petition therefore fails to provide any basis upon which

---

21. PA pp. A. 28-30.

22. Morsey's Petition at pp. 18-19. Morsey suggests *Van Arsdale v. Claxton*, 391 F.Supp. 538 (S.D. Cal. 1975) relied on by the District Court (PA pp. A. 31, 32) conflicts with *Altschuler v. Cohen*, 471 F.Supp. 1372 (S.D. Tex. 1979) and *Bartels v. Algonquin Properties, Ltd.*, 471 F.Supp. 1132 (D. Vt. 1979). These District Court cases, even if they conflicted, could not be used to establish the "conflict" consideration under this Court's Rule 17(a).

23. *Howey, supra*, 328 U.S. 1103.

24. Morsey's Petition, pp. 19-21.

this Court could determine the Court of Appeals erred in determining the District Court's fact findings were not clearly erroneous and the record revealed no error of law.

CONCLUSION

Morsey has failed to meet his Rule 17 burden. His Petition reveals no special and important reasons why the writ should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; further, the decision below was correct in finding neither the findings of fact nor conclusions of law erroneous. Respondent Green requests that the Petition for Certiorari be denied.

Respectfully submitted,

JONES & FOSTER, P.A.
WILLIAM A. FOSTER
(Counsel of Record)
601 Flagler Drive Court
Post Office Drawer E
West Palm Beach, Florida 33402
(305) 659-3000
Attorneys for Respondent Elmer G. Green

APPENDIX TO RESPONDENT ELMER G. GREEN'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATEMENT OF ISSUES PRESENTED IN MORSEY'S BRIEF IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATEMENT OF THE ISSUES

I. WHETHER THE PARTICIPATION MORSEY PURCHASED FROM GREEN IS A SECURITY.

II. WHETHER THE DISTRICT COURT ERRED IN FAILING TO INSTRUCT THE JURY ON FLA. STATUTE §475.25.

III. WHETHER THE DISTRICT COURT DENIED MORSEY A FAIR TRIAL.